



## Procedures for Administrative Proceedings

**Effective:** July 1, 2020

**Director:** Matthew A. Brown, \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Matt Brown", is written over a horizontal line.

### Purpose

This policy outlines the Office of Administrative Law Proceedings' expectations for how Administrative Law Judges preside over proceedings and the procedures by which those proceedings will be governed.

### Scope

This policy applies to all Administrative Law Judges employed and contracted by the Office of Administrative Law Proceedings.

### Definitions

The following definitions apply throughout this policy

- Bias means a predisposition for or against one thing, subject, person, or group compared with another; not impartial.
- Certified means the ALJ has been approved by the OALP to preside over a particular proceeding type.
- Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual.
- Reasonable accommodation means modifying a process to ensure meaningful participation for a party in a proceeding through modification of processes, facilities, or hearing procedures. This includes providing interpretive services.
- Harassment means verbal or physical conduct that denigrates or shows hostility or aversion towards a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, socioeconomic status, or political affiliation.
- Integrity means fair, honest, not corrupt, and of sound character.
- Prejudice means a preconceived judgment or a strong bias.
- Interest means having involvement in a matter, typically where one would receive an advantage or benefit. Interest may be characterized as:
  - Financial interest has the meaning set forth in Indiana Code Section § 4-2-6-1(a)(11) in a proceeding or outcome; and/or
  - Personal interest means having a relationship with an individual or an interest in a particular matter due to a personal belief, view, or affiliation, such that the interest has or may have an actual or apparent influence on one's ability to remain impartial.
- Relationship refers to the way in which two or more people are connected or behave towards each other and may be characterized as:



- Economic relationship defined as a relationship that includes but is not limited to engaging in business enterprises on a personal basis such as solicitation of sales, loaning and borrowing money, business partnerships, or shared living accommodations; and/or
- Personal relationship defined as a familial or any other relationship in which the ALJ may have a bias.

## Requirements

### Procedures for Administrative Proceedings

Except as stated below, all administrative proceedings over which an administrative law judge presides shall be governed by the Administrative Orders and Procedures Act ("AOPA") found at Indiana Code Section § 4-21.5 *et seq.*

If, prior to July 1, 2020, an agency has published an Indiana administrative rule governing the practice and procedure before an administrative law judge for a particular proceeding, the OALP hereby adopts those procedures. This includes, but may not be limited to:

- Department of Child Services (DCS).
  - DCS has promulgated the following rules pertinent to the process for administrative proceedings:
    - Administrative Reviews and Hearings: 465 IAC 3
  - DCS has policies are posted online within the Indiana Child Welfare Manual (<https://www.in.gov/dcs/2354.htm>). DCS is responsible for the maintenance of these policies, which include:
    - Administrative of Child Welfare (Chapter 2)
    - Adoption (Chapter 10)
    - Older Youth Services (Chapter 11)
    - Foster Family Home Licensing (Chapter 12)
    - Guardianship Assistance Program (Chapter 14)
- Department of Labor
  - DOL has promulgated rules pertinent to the process for administrative proceedings concerning:
    - Right to Work: 610 IAC § 11-1-7
    - Board of Safety Review: 615 IAC § 1
- Family Social Services Administration (FSSA)
  - FSSA has promulgated the following rules pertinent to the process for administrative proceedings:
    - Medicaid: 405 IAC §§ 1, 1.1
    - Medicare Part D Prescription Drug Program: 405 IAC § 8
    - Children's Health Insurance Program: 405 § IAC 12
    - Vocational Rehabilitation: 460 IAC § 14-25





- SNAP/TANF: 470 IAC § 1
- Horse Racing Commission (HRC)
  - HRC has promulgated the following rules pertinent to the process for administrative proceedings:
    - Due Process and Disciplinary Action: 71 IAC 10-3
- Indiana Civil Rights Commission (ICRC).
  - ICRC has promulgated rules pertinent to the process for administrative proceedings at 910 IAC §§ 1 and 2
- Indiana Gaming Commission
  - General Hearing Provisions: 68 IAC § 21-7
  - Seizure, Forfeiture, and Disciplinary Hearings: 68 IAC § 13
- Indiana State Department of Health (ISDH)
  - ISDH has promulgated the following rules pertinent to the process for administrative proceedings:
    - Health Facilities: 410 IAC § 16.2
    - Home Health Agencies: 410 IAC § 17
- Secretary of State (SOS)
  - SOS has promulgated the following rules pertinent to the process for administrative proceedings:
    - Division Proceedings: 710 IAC § 4-12

If a state or federal law, or federal regulation, governs the practice and procedures before an administrative law judge for a particular proceeding, the OALP hereby adopts those procedures. This includes, but may not be limited to:

- Department of Child Services
  - 42 USC § 671(a)(12) State Plan for foster care and adoption assistance
  - 45 CFR § 205.10 Hearings
  - 45 CFR § 1355.30 Other applicable regulations (AAP)
  - 42 USC § 673(d) Kinship Guardianship Assistance Program
- Department of Education and State Board of Education
  - Nutrition Programs: 7 CFR §§ 225.13, 226.6
- Indiana Civil Rights Commission
  - 42 USC §§ 12111-12189 Americans with Disabilities Act of 1990
  - 42 CFR §§ 3601-19 Federal Fair Housing Act
- Indiana State Department of Health (ISDH)
  - Long-Term Care Facilities, Conduct of Hearing: 42 CFR § 488.335(d)

OALP ALJs shall also adhere to any other applicable requirement prescribed by state or federal law or regulation in proceedings over which the ALJs preside. Unless prohibited by law or regulation, OALP favors scheduling hearings telephonically. However, any



party, or the administrative law judge, may request an in-person hearing. Such requests should be granted absent extraordinary circumstances.

### Prohibition on Bias, Prejudice, and Harassment

An administrative law judge shall perform the duties of their position without bias or prejudice.

An administrative law judge shall not, in the performance of their duties, by words or conduct manifest bias or prejudice or engage in harassment, including but not limited to, bias, prejudice, or harassment based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation, and shall not permit individuals subject to the administrative law judge's supervision to do so.

An administrative law judge shall admonish any party or party representatives who display any bias, prejudice, or engage in harassment based on an individual's race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, socioeconomic status, or political affiliation.

The restrictions above do not preclude administrative law judges or parties and party representatives from making legitimate reference to the factors listed above when such references are relevant to an issue in a proceeding.

### Prohibited Conflicts of Interest

An administrative law judge shall not permit their interests or relationships to influence the administrative law judge's judicial conduct or judgment. An administrative law judge shall not use or attempt to use their position to advance their interests or the interests of others with whom the administrative law judge has had or has a personal or economic relationship, or allow others to do so.

An administrative law judge shall not preside over any proceeding in which:

- (a) a party or a representative of a party has or has had a relationship with the administrative law judge;
- (b) the administrative law judge may be impacted personally or financially by the outcome of the proceeding; or
- (c) any person or entity with whom the administrative law judge has or has had a relationship may be impacted personally or financially by the outcome of the proceeding.



An administrative law judge must immediately recuse themselves from a proceeding upon learning about an actual or apparent conflict described in subsections (a) and (b) of this above and immediately notify the Director in writing.

An administrative law judge must immediately seek an advisory opinion from the Director if the administrative law judge has information that a potential for a conflict described above exists.

#### Ensuring the Right to be Heard

An administrative law judge shall afford to every person whose legal rights, duties, or privileges may be determined in a proceeding due process and the right to be heard according to law.

An administrative law judge shall grant any reasonable accommodation request necessary to allow an unrepresented party or an individual with a disability to fully and fairly participate in a proceeding and be heard.

#### Reporting Impairment

An administrative law judge having a reasonable belief that the performance of a representative of a party or another administrative law judge is impaired by drugs, alcohol, or a mental, or physical condition shall take appropriate action to protect the party's opportunity to be heard such that no party is prejudiced by the impaired representative or the administrative law judge which may include an order continuing proceedings or a confidential referral to an assistance program.

#### Reporting Judicial Misconduct

An administrative law judge having direct or indirect knowledge that another administrative law judge has committed a violation of this policy or the code of judicial conduct shall promptly inform the Director.

#### Cooperation with Disciplinary Authorities

An administrative law judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies, and the Director.

An administrative law judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation regarding an administrative law judge.





### Disqualification of Administrative Law Judge

An administrative law judge is subject to disqualification from presiding over a proceeding for any of the following:

- (1) the ALJ has a conflict of interest, bias, or prejudice as set forth in this policy or an interest in the outcome of a proceeding;
- (2) failure to dispose of a matter or proceeding in an orderly and reasonably prompt manner;
- (3) committing a violation of this policy or the Code of Judicial Conduct;
- (4) any cause for which a judge of a court may be disqualified; or
- (5) any reason that impairs the integrity of the Office, as decided by the Director.